

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JAMES H. FISCHER,

:

Plaintiff,

:

14 Civ. 1304 (PAE) (HBP)

-against-

:

SANDRA E. FORREST, et al.,

:

Defendants.

:

-----X

JAMES H. FISCHER,

:

Plaintiff,

:

14 Civ. 1307 (PAE) (HBP)

-against-

:

STEPHEN T. FORREST, JR., et al.,

:

ORDER

Defendants.

:

-----X

PITMAN, United States Magistrate Judge:

Plaintiff has filed a document entitled "Motion to Admit Newly Discovered Evidence" in these matters. It appears that plaintiff seeks to have me consider certain additional material in connection with defendant Gebauer's pending motion to dismiss for failure to state a claim.

A motion to dismiss for failure to state a claim is addressed to the face of plaintiff's complaint; it is not an evidentiary proceeding. "To survive a motion to dismiss, a

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/28/15

complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678, (2009) (internal quotation marks omitted).

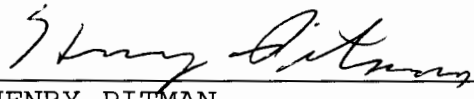
The law is well settled that in considering a motion to dismiss for failure to state a claim, a Court is ordinarily limited to the complaint, documents annexed to the complaint or incorporated by reference, facts that are judicially noticeable and documents that are integral to the complaint. Rothman v. Gregor, 220 F.3d 81, 88 (2d Cir. 2000); Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995). Material that does not fit within any of these categories is, ordinarily, not properly considered.

I shall consider the additional material plaintiff has submitted as a supplement to plaintiff's opposition to the pending motion to dismiss. I express no opinion at this time as to whether it may properly be considered. If plaintiff's new material falls within one of the categories identified in the preceding paragraph, I shall consider it; if it does not fit within one of those categories, I shall disregard it.

The Clerk of the Court is directed to mark Docket Item
66 in 14 Civ. 1304 and Docket Item 86 in 14 Civ. 1307 as closed.

Dated: New York, New York
April 28, 2015

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

Mr. James H. Fischer
P.O. Box 287048
New York, New York 10128

Daniel K. Cahn, Esq.
Cahn & Cahn, P.C.
22 High Street
Huntington, New York 11743